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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re S.P., a Person Coming Under the
Juvenile Court Law.

B214519
(Los Angeles County
Super. Ct. No. CK74819)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

FRANCISCO P.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County.
Terry Truong, Juvenile Court Referee. Affirmed.

Michael A. Salazar, under appointment by the Court of Appeal, for Defendant and
Appellant.

Office Of County Counsel, James M. Owens, Assistant County Counsel,
Denise M. Hippach, Associate County Counsel.

Appellant Francisco P. (Father) challenges a dependency court finding that he sexually abused his daughter S.P. The court's finding is supported by substantial evidence. We affirm the judgment establishing dependency court jurisdiction.

FACTS

S.P. was born in 1997. Her parents were married in 1998; however, Father was present at S.P.'s birth and claims parentage of S.P. S.P. lives with Father in California, while her mother Lorena R. (Mother) lives in Mexico. Mother's whereabouts are unknown, though Father believes she is seeking treatment in Tijuana for heroin addiction.

S.P. came to the attention of the Department of Children and Family Services (DCFS) in September 2008, when it received a sexual abuse referral. S.P. stated that Father has abused her for three years, since she was eight or nine years old.

S.P. underwent interviews with the police and a district attorney; a DCFS social worker observed the latter interview behind a glass mirror. S.P. indicated that she and Father sleep in the living room of her grandmother's apartment. Father began his abuse by massaging, caressing and kissing her neck and shoulders. After time passed, he gave her "more kisses" and was touching "more places," including her buttocks and breasts. S.P. always tried to pull away, and asked Father to stop because she was uncomfortable. Father would reply, "It's Okay I'm your dad. There's nothing wrong with it because I'm your dad." Despite S.P.'s resistance, she would often wake up to find Father licking and touching her breasts ("chi-chis"). Once while she and Father were in Mexico, Father told her to look at him: he was naked, his penis was erect, and he was rubbing it with his hand. She has seen him "playing with his penis" on more than one occasion. Father "kisses her on the mouth, with tongue, all of the time." Father had S.P. touch his penis ("pelin"), and she once felt his penis on her vagina when she woke to find Father naked on top of her. S.P. also awoke on one occasion to find Father on top of her and could feel his finger in her vagina ("cukie"). The most recent molestation occurred about two weeks before the interviews. S.P.'s medical examination was "normal."

In his interview with the police, Father denied any wrongdoing. He explained that many of his actions--including patting S.P. on the butt, massaging her shoulders and

“long kisses” on the mouth--were merely endearments. He denied ever seeing S.P.’s chest, let alone kissing it; however, he also stated that he has rubbed S.P.’s stomach under her clothes, and may have touched her chest. He stated that he cannot have intercourse due to a “‘disinfection’ on his penis,” which also infects his mouth. Father initially conceded that S.P. has seen him naked, once when he was showering and once when he was changing clothes. They both “laughed about the size of his penis, referring to it as ‘small.’ [Father] then denied that the Victim ever saw his penis.” Father slept in the same bed with S.P. during their visits to Mexico, because S.P. was afraid to sleep alone.

When interviewed by the DCFS social worker, Father continued to deny the allegations against him. The social worker informed him of S.P.’s report of sexual abuse. “Father then asked if . . . sexual abuse . . . meant just touching or penetration,” adding that “he has never penetrated his daughter.”

S.P.’s maternal aunt informed the social worker that Mother is “‘lost’ somewhere in Tijuana, Mexico” and “has a hardcore drug problem.” S.P.’s schoolteacher was interviewed. The teacher reported that S.P. disclosed in a conversation that “she has been sexually abused by father for the last 3 years”; further, Mother (who Father accuses of being a drug addict) lives on the streets in Mexico and begs for money for basic needs. S.P.’s older half-sister, C.L. (Father’s step-daughter), denied being sexually abused and believes that S.P. is not telling the truth. C.L. knew that S.P. does not like living with Father, but does not know why S.P. is unhappy.

A dependency petition was filed on October 1, 2008. At the detention hearing, the court found a prima facie case for removing S.P. from Father’s custody. It ordered family reunification services, including parenting classes and individual counseling. Father was allowed monitored visitation at the DCFS office.

DCFS submitted to the court a jurisdiction/disposition report. The report first addresses the issue of domestic violence in Father’s household. C.L. reported that she did not see “a fist fight” between Father and her mother; rather, they were “cussing each other out.” Once, they fought over S.P., with each parent pulling a different arm of the child. Although C.L. never saw Father strike her mother, “My mom would tell me that

[Father] would hit her. I would see small bruises on my mom. I saw bruises on her arms and thighs.” S.P. reported that “My parent[s] would argue a lot. They argued like yelling at each other. They argued with their mouths and not with their hands.” Like her sister C.L., S.P. did not witness physical altercations; however, “my mom told me that my dad would hit her when they were alone. She told me that she was afraid to be alone with my dad. I remember seeing some marks and bruises on her legs, arms, and on her face. . . . When I saw a bruise, my mom told me that my dad gave her the bruises. I believe my mom when she told me that my dad had given her the bruises.”

Next, with regard to sexual abuse, C.L. stated that Father “never did anything to me or I wasn’t afraid of him.” C.L. does not believe that Father molested S.P. In her interview, S.P. reiterated that Father started out by “massaging my back and my shoulders and then he kissed me on my neck a lot.” S.P. indicated that Father started to touch her breasts “[w]hen I turned 11 years old.” He also touched her “butt.” Father kissed her on the lips and it “was really gross because he started to kiss me and then his tongue was in my mouth.” S.P. indicated that she has seen Father naked “a couple of times. He has a ding a ling (penis) and I don’t.” She said that she found Father masturbating in the bedroom, and “I guess I just barged in and caught him.” Another time, he was watching television in the room and he was naked. He had just gotten out of the shower and he was in there and I walked in and he was playing with his private again.” S.P. changed her account from a prior interview, stating that Father “wasn’t on top of me, I was on top of him. I was watching television and I fell asleep. . . . When I woke up I was on top and he was kissing my neck and his hand was on my private” inside of her underwear. She thinks his fingers were inside of her private. This occurred on only one occasion. Further, when she awoke, “my shirt wasn’t on and he was kissing me on my boob. I tried to move so he could stop, but he didn’t. He just told me that it was okay because he was my dad.” This occurred “two or more times.”

DCFS attached an additional police investigative summary to its jurisdictional report. In it, S.P. stated that she missed Mother. S.P. did not feel safe at home because Father “hit her on her arms and does not let her go outside.” Although S.P. felt bad about

this, it was far worse “when he touches her,” kissing her and touching her chest. This made S.P. feel “uncomfortable” but Father “always told her it was ok.” Father “touched her and did more things each time,” massaging her back, putting his hands under her clothing, and eventually removing her shirt. S.P. told Father that she did not like it. As S.P. got older, Father would ask her, “Can I kiss your chi chis?” Father “scares her very much and sometimes she wants to kill herself.” S.P. cried as she related this to the officer. She explained that she wants to kill herself because Father “puts his hands inside of her pants [and] then sticks his finger inside” of her “front hole.” Father regularly told S.P. that this was okay because “I’m your dad.” Also, she awoke one night to find Father lying on top of her and “she felt something inside of her hole.”

Through his attorney, Father exercised his Fifth Amendment right and declined to speak to DCFS regarding any of the allegations against him.

The jurisdictional hearing was conducted on February 3, 2009. In her testimony, S.P. indicated that she moved into foster care because Father “made me feel very uncomfortable”: “He would touch me; he would lick me. He would do things that a father should not do to his daughter.” She stated that the first time Father did this was when she was 11. S.P. reiterated that Father said that his massaging and rubbing were “okay because he’s my dad.” He started by touching her chest and back, under her pajamas, “and he didn’t get to the bottom until, like, after.” She estimated that he touched her breasts five to 10 times. Eventually, “he touched me on my private part,” skin to skin,” which made her “very, very uncomfortable.” He touched her private parts “often, but I can’t think of a number.”

S.P. did not tell anyone about the touching because “I was scared that he would do something, because he told me not to tell anybody.” In addition, he kissed her “with his tongue” on her lips. Once, Father came out of the shower, lay down naked near S.P., who was watching television, and said, “Touch it.” When S.P. protested, Father said, “‘Please.’ So I touched it,” referring to his penis. He has laid down naked with her two or three times, and she has seen “white stuff.” He has gotten on top of her 10 to 15 times, partially dressed, and pressed against her. S.P. told her foster mother that “I just feel like

I want to die” because it was “all my fault” that she told people about “what has happened between me and my father” During Father’s weekly visits following S.P.’s detention, Father told S.P. that “When I stopped lying, that I could go back with him.” S.P. replied to Father, “That’s not true. I’m not lying. You should actually get your facts straight.” S.P. does not want to live with Father again because she cannot trust him.

Father testified that S.P. was lying and he has never touched her inappropriately. He conceded that he has given S.P. “massages” on several occasions while she was in bed, though not on her chest or stomach. He has also kissed S.P. on the lips because “It’s her custom,” though he denied using his tongue. S.P. has seen Father naked on several occasions, when he was in his bedroom or coming out of the shower. He never asked S.P. to touch his penis. When Father told the police that he gave S.P. “long kisses” he was referring to “a game that she invented.”

At the completion of the evidence, the court found that S.P. “is a credible witness in this case. There does not appear to be any reason why she is making up her testimony to the court as well as what she has previously told social workers and others in the case. While I recognize that there are discrepancies in her story, there does not appear to be the extent of discrepancy where I would find that she is not credible.” By contrast, the court said, “I don’t believe the father in this case.”

The court sustained three allegations: (1) on numerous occasions, Father sexually abused S.P. by touching the child’s breasts and vagina; making the child fondle Father’s penis; kissing the child with his tongue; and laying on top of the child in bed, all of which places S.P. at risk of physical and emotional harm; (2) Father and Mother have a history of domestic violence in which Father hit Mother, placing S.P. at risk of harm; and (3) Mother has a history of drug abuse, and currently abuses heroin, so she is incapable of providing regular care for her children. The court dismissed the other charges alleged in the petition. The court declared S.P. to be a dependent of the court and removed her from Father’s custody. Family reunification services were ordered. Father was authorized to

have monitored visitation, and was ordered to participate in individual counseling to address sexual abuse.

DISCUSSION

1. Standard of Review

Once the court adjudicates the dependency petition, its subsequent dispositional order constitutes an appealable judgment. (Welf. & Inst. Code, § 395; *In re Sheila B.* (1993) 19 Cal.App.4th 187, 196.) “In reviewing the jurisdictional findings and the disposition, we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

2. Jurisdictional Findings

Father argues that substantial evidence does not support the trial court’s findings that S.P. was sexually abused. Jurisdiction is proper if there is evidence that “The child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household” (Welf. & Inst. Code, § 300, subd. (d).)¹

Father contends that S.P.’s testimony was inconsistent and uncorroborated, and that she was an unreliable witness. He notes that S.P. listed different ages at which Father’s molestations began, depending on whether she was speaking to the district attorney or her schoolteacher, or testifying in court. Also, S.P. claimed to have been sexually penetrated by a teenaged cousin, yet her medical examination was “normal.”

¹ Penal Code section 11165.1 defines sexual abuse as, among other things, lewd or lascivious acts upon a child, sexual penetration and child molestation. This includes the intentional touching of a child’s genitals or breasts, or the clothing covering them, and masturbation in the presence of a child.

Inconsistent retellings by a child regarding sexual molestations do not destroy the child's credibility as a witness. For example, in *In re Rubisela E.* (2000) 85 Cal.App.4th 177, a child initially told the police and the social worker at the time of detention about a single incident of molestation; in an interview for the jurisdictional hearing report, she denied that her father had ever touched her breast, vagina or buttocks, or asked her to touch his penis. (*Id.* at pp. 180-183.) However, during counseling sessions, she told her therapist about multiple incidents of sexual misconduct, involving Father's touching of her breasts, vagina and buttocks, some five to 10 times. (*Id.* at pp. 185-186.) During the adjudication hearing, the child testified about multiple incidents of sexual abuse. (*Id.* at pp. 187-199.)

The father in *Rubisela E.* argued to this Court that "the inconsistencies in Rubisela's retelling of the incident to various investigators, as well as the fact her sister never awoke during the confrontation, compel a conclusion that her testimony and the evidence as a whole does not support a finding that Father ever touched Rubisela in a sexual way or proposed oral sex." (85 Cal.App.4th at p. 195.) Our opinion reads, "As Father concedes, the testimony of a single witness can be sufficient to uphold a judgment. [Citation.] The juvenile court observed Rubisela and her parents. As is often the case, her testimony and the various reports given to investigators contained inconsistencies. Nevertheless, although the exact circumstances surrounding the event may have differed in the retelling, the essence of the offense, that her Father asked her to orally copulate him in the middle of the night, did not change. Only after months of therapy did the prior sexual acts become known; but such belated revelation is understandable and not inherently incredible." (*Ibid.* Accord: *In re P.A.* (2006) 144 Cal.App.4th 1339, 1344.)

Reading the record as a whole, we conclude that substantial evidence supports the dependency court's finding of sexual abuse. Although S.P. indicated at one point that Father started touching her when she was eight or nine years old, it is unclear whether she was referring to his massages, or overt sexual acts. The police report states that when S.P. was nine Father "began massaging and kissing her neck while caressing her shoulders, and would often touch her buttocks." S.P. informed the investigators that she

moved in with Father in August of 2008, and the touching and kissing “began almost immediately after she moved in.” In her interview for the jurisdiction hearing report, S.P. stated that Father started to touch her breasts “when I turned 11 years old,” which was in 2008. This is consistent with her testimony at trial, where she stated that the abuse began at age 11.

S.P. was very consistent regarding the nature of the abuse. In each recounting, she indicated that the abuse began with massaging. As time went by, Father began kissing her using his tongue, and touching her in more places, including her buttocks and breasts. S.P. repeatedly asked Father to stop because she was uncomfortable, and Father always said that his conduct was okay because he was her dad. In his initial interview with the police, Father confirmed much of what S.P. said, conceding that he massaged S.P., patted her buttocks, and gave her “long kisses” on the mouth, though he characterized these actions as endearments. Father asked the social worker whether sexual abuse “meant just touching or penetration,” noting that he has never penetrated S.P. At trial, Father testified that he gave S.P. massages and kissed her on the lips.

The court observed the demeanor of the witnesses, and found S.P. was a credible witness. The court acknowledged that there were some discrepancies in S.P.’s story, but not enough to cause the court to doubt her veracity. The court flatly stated that it did not believe Father’s testimony. We agree with the trial court that the inconsistencies did not discredit S.P.’s testimony. S.P. told the trial court that she came forward to disclose the abuse at great personal cost--she felt guilt and anguish, such that “I just feel like I want to die.” The trial court was entitled to believe that S.P. was not fabricating her testimony. It is not significant that the trial court chose to dismiss several allegations in the petition relating to sexual abuse by S.P.’s cousins, “in the interest of justice.” This does not mean that the court disbelieved S.P.’s claims of abuse by her male relatives; rather, it may be that the court recognized that these claims were not integral to the issue of whether Father abused S.P. and whether he should retain custody of S.P.

Finally, we note that Father does not challenge the sustained jurisdictional findings that he committed domestic violence by hitting Mother. A dependency judgment must be

affirmed “if the evidence supports the decision on any one of several grounds.” (*In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875.) Otherwise stated, “where one basis for jurisdiction [is] supported by substantial evidence [the] court does not need to consider [the] sufficiency of evidence to support other bas[e]s” (*Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72.) Because Father has conceded the validity of the domestic violence finding by failing to challenge it on appeal, the judgment must be affirmed: “We will not reverse for error unless it appears reasonably probable that, absent the error, the appellant would have obtained a more favorable result.” (*In re Jonathan B.*, *supra*, 5 Cal.App.4th at p. 876.) Dependency jurisdiction would still be required in this case, even if the trial court had not sustained the finding of sexual abuse.

DISPOSITION

The judgment is affirmed.

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BOREN, P.J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.